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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 26.

THE FARMERS LOAN AND TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

REPLY BRIEF ON BEHALF OF APPELLANT.

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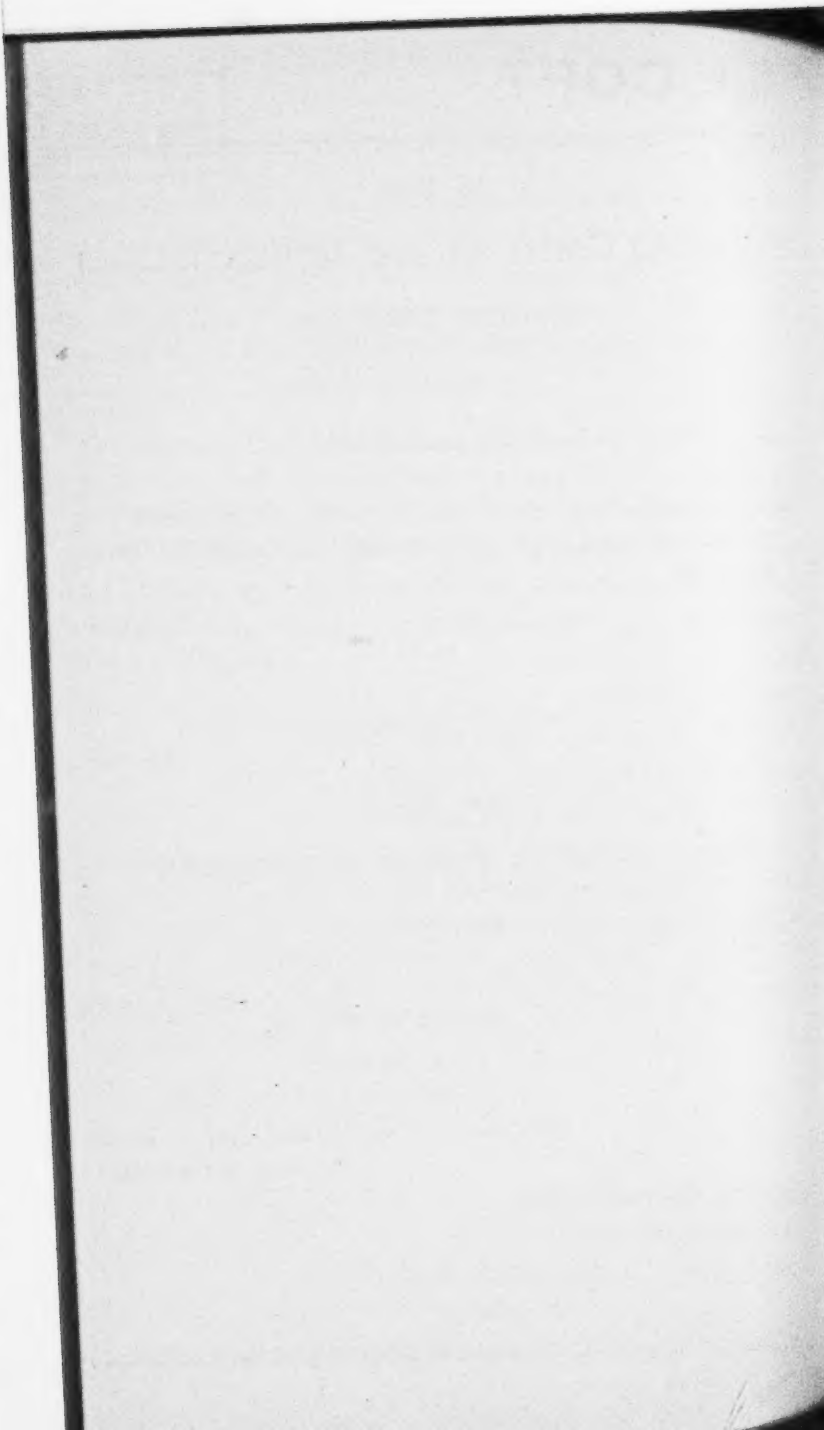

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We desire to reply briefly to two points made by the State in its brief.

I.

BLODGETT V. SILBERMAN DOES NOT DESTROY THE FOREIGN-HELD BONDS CASE AS AN AUTHORITY IN THE PRESENT CASE.

Counsel assert that *Blodgett v. Silberman,* 277 U. S. 1, destroys the *Foreign-Held Bonds Case,* 15 Wall. 300, as an authority for appellant's contention that bonds (particularly state

and municipal bonds), because of their tangible character, are not taxable at the domicile of the bond debtor if the bonds are owned by a non-resident and held outside the state. (See pp. 12, 21, State's Brief.) The decision cannot be read in that way. This Court simply held that the *Foreign-Held Bonds Case* is not authority for the proposition "that such bonds are to be *completely* assimilated to tangible personal property" (277 U. S. 14), so as to exclude the power of the domiciliary jurisdiction to tax. It held that even as to debts taking the form of bonds the maxim *mobilia sequuntur personam* must still apply. It did not disturb or touch upon the unequivocal holding in the *Foreign-Held Bonds Case* that bonds thus owned and held are property without the jurisdiction of the state of the bond debtor's domicile.

Counsel, in support of their assertion that the *Blodgett Case* destroys the authority of the *Foreign-Held Bonds Case* as to this principal holding, quote a passage from the opinion of this Court in the *Blodgett Case* (State's Brief p. 13); but we respectfully submit that an examination of the cases (*Savings Society v. Multnomah County*, 169 U. S. 421; *New Orleans v. Stempel*, 175 U. S. 309; *Blackstone v. Miller*, 188 U. S. 189) cited by this Court immediately before the quoted passage shows that those cases do not question the authority of the *Foreign-Held Bonds Case* upon that point. This ruling of the *Foreign-Held Bonds Case* was left untouched in the *Multnomah County Case*. It was affirmed in the *Stempel Case* where this Court said (p. 319):

> "In *State Tax on Foreign Held Bonds*, 15 Wall. 300, *it was held* that while the taxing power of the State may extend to property within its territorial limits, it cannot to that which is outside those limits, and therefore *that bonds issued by a railroad company, although secured by a mortgage on property within the State, were not subject*

to taxation while in the possession of their owners who were non-residents." (Italics ours).

It was again affirmed in *Blackstone v. Miller*, where this Court said, speaking specifically of the *Foreign-Held Bonds Case* (p. 306):

"Therefore considering only the place of the property, it was held that bonds held out of the State could not be reached." (Italics ours).

This Court did not in its opinion in the *Blodgett Case* say that it overruled the *Foreign-Held Bonds Case* nor the interpretation thereof in the cases cited in the passage referred to counsel. We respectfully submit that the *Blodgett* decision does not cast any doubt upon the correctness of the principal ruling in the *Foreign-Held Bonds Case* which stands as the law to this moment.

II.

Neither the Administration Cases Nor Garnishment Cases Are Authorities for the State's Contention that a Debt Has a Tax Situs at the Debtor's Domicile.

By a long line of decisions of this Court, of which *Blodgett v. Silberman*, 277 U. S. 1, is the last, it has been firmly settled that the state of the domicile of the creditor is the state which can tax a debt. See *State Tax on Foreign-Held Bonds*, 15 Wall. 300, *Kirtland v. Hotchkiss*, 100 U. S. 491, and *Buck v. Beach*, 206 U. S. 392, 401. Only under special circumstances, as, for example, where the debt has been given a business situs elsewhere or where the debt is in the form of a bond located elsewhere, is such a debt taxable in any other jurisdiction.

To oppose this established principle of law counsel have not produced, *and they cannot produce,* a single decision of this Court holding that a state can tax a simple debt by reason of the sole fact that the debtor is domiciled within its borders. *Blackstone v. Miller,* 188 U. S. 189, being a bank deposit case and involving a credit which had been given a business situs in New York, is on its facts no exception as we have shown in our original brief.

Lacking such authority, counsel are forced to turn to three decisions, viz.: *Wyman v. Halstead,* 109 U. S. 654, *Chicago, etc., Railway Co. v. Sturm,* 174 U. S. 710, and *Pennington v. Bank,* 243 U. S. 269,—none of which is a taxation case or in fact has anything to do with the problem at hand. It may be fairly said that upon these three cases, together with the *Blackstone Case,* Minnesota now places its entire reliance.

In *Wyman v. Halstead, supra,* this Court said (p. 656):

> "The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor."

and it is this statement upon which counsel place so much reliance.

At common law a foreign administrator could not sue in a state. Under this rule if a nonresident creditor of a resident debtor died, the debtor could successfully avoid the payment of his debt by the simple method of never leaving the state of his domicile. To avoid this intolerable situation, this and other Courts held that "for the purpose of administration" debts should be considered assets at the domicile of the debtor. This rule grew out of necessity as explained by Mr. Justice Gray, then a member of the Massachusetts Supreme Judicial Court, in *Pinney v. McGregory,* 102 Mass. 186, 192:

"Before that statute, the probate courts of the Commonwealth exercised the jurisdiction of granting administration on property belonging or debts due to persons residing abroad, in order to enable them to be collected in this state, because without such appointment no suit could be brought in Massachusetts for the assets or debts of the deceased, either in the courts of the Commonwealth or of the United States."

Counsel's argument must be that because a debt is assets at the domicile of the debtor so that it may there be collected for the benefit of the nonresident creditor's estate, therefore the debt has a situs there for taxation purposes. *New England Mutual Life Insurance Co. v. Woodworth*, 111 U. S. 138, demonstrates the fallacy of such an argument. In that case it was held that administration could be had in a state where the debtor, a corporation, was not domiciled but was simply doing business. Administration was permitted not because of necessity but as a matter of convenience. It follows that if a corporation debtor is doing business in the state of its creation as well as in the other forty-seven states, administration could be founded with respect to the single debt in every state in the union. But does this mean that that debt could be taxed by each of the forty-eight states? This is unthinkable. The *Woodworth Case* simply shows that the so-called "situs" of a debt for administration purposes has nothing whatever to do with its "situs" for taxation purposes.

Neither do the *Sturm* and *Pennington cases, supra*,—the garnishment cases,—have any bearing upon the present question of taxation. They hold that to secure payment of the obligation due him, a creditor can attach a debt owing his debtor at the domicile of the latter's debtor. In the *Sturm Case* this Court made it plain that this is so not because the "situs" of

the debt is with the debtor but, again, because of necessity. This Court reluctantly spoke in terms of "situs" at all (p. 715, 716):

> "The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the domicile of his debtor, and can only do it under the laws and procedure in force there. *This is a legal necessity, and considerations of situs are somewhat artificial.*

Again (p. 716):

> *"To ignore this is to give immunity to debts owed to non-resident creditors from attachment by their creditors, and to deny necessary remedies.*

And again (p. 716):

> *"This, as we have already said, is a necessity, and it cannot be evaded by the insistence upon fictions or refinements about situs or the rights of the creditor.* (Italics ours.)

Sixteen years after the *Sturm* decision this Court, in *Harris v. Balk,* 198 U. S. 215, held that a debt may be garnisheed in any state in which the debtor can be served with process, even though that state is not his domicile and he is there but temporarily. In its decision this Court rejected all consideration of the "situs" of the debt. It said (p. 222):

> "We do not see how the question of jurisdiction *vel non* can properly be made to depend upon the so-called original *situs* of the debt, or upon the character of the stay of the garnishee, whether temporary or permanent, in the State where the attachment is issued."

Again on the same page it said:

> "We do not see the materiality of the expression '*situs* of the debt' when used in connection with attachment proceedings."

Still again on page 223, it said:

"In such case the *situs* is unimportant."

The *Harris Case* disposes beyond question of any argument that because a debt can be garnisheed at the domicile of the debtor, therefore the situs of the debt is there. Certainly it cannot be argued that a debt can be taxed wherever it can be garnisheed, for if this were so, then under the *Harris* decision every state in the Union could tax a single debt due from a corporation provided that corporation were doing business in all the states. (See: *Louisville, etc., R. R. v. Deer,* 200 U. S. 176; *B. & O. R. R. v. Hostetter,* 240 U. S. 620). Manifestly this cannot be.

The doctrine of the *Wyman* and *Sturm cases* was based upon necessity. The *Woodworth* and *Harris* cases extended the doctrine because of convenience. This extension deprives the earlier cases of whatever value as authorities they might otherwise have had for the State of Minnseota in the present case.

Counsel seek to make use of the case of *Baker v. Baker, Eccles & Company,* 242 U. S. 394 (State's brief, p. 9). Counsel obviously meant to say "decedent's domicile" instead of "debtor's domicile" in the third line of the paragraph, but counsel err in assuming that in that case Tennessee was decedent's domicile. "The place of his domicile, admittedly determinative of the law of distribution, was in controversy" (p. 395), and for that reason litigation arose. Because of counsel's reliance upon the *Baker* case as they construed it, we think it proper to restate its facts briefly. Charles Baker died owning real and personal property in Tennessee and shares of stock and a claim against Baker, Eccles & Company, a Kentucky corporation. According to Tennessee laws all the personal property would go to the widow; according to Kentucky laws half would go to the widow and half to

the mother. The widow obtained judgments in two Tennessee courts whereby it was determined that decedent was domiciled in that state and hence that the widow was entitled to all the personal property, including the debt. But neither of these proceedings was *in personam* in nature; the mother was not brought in as a party save by publication. The widow then brought suit in Kentucky against Baker, Eccles & Company to compel the transfer to her of the stock and to recover the debt. The mother intervened. This Court held that Kentucky was not required to give faith and credit to the Tennessee judgments, not being judgments *in personam*, except insofar as they affected the property indisputably in Tennessee. Whether the debt was property in Tennessee or Kentucky depended upon a determination of the creditor's domicile. Kentucky was the first state to render a judgment *in personam* on that question binding on all parties, and by that judgment the domicile was found to be in Kentucky. It followed as a matter of course that the debt should be administered according to Kentucky law.

Had the Kentucky proceeding not been *in personam* in nature, no other state which might thereafter have actual personal jurisdiction over all the parties interested would have been bound by the Kentucky judgment with respect to domicile and therefore with respect to the debt due from the Kentucky corporation. This thought is implicit in the following language of this Court (p. 404):

> "Unless all possible distributees can be brought within the jurisdiction of a single court having authority to pass upon the subject matter, either by service of process or by their voluntary appearance, it must in many cases be impossible to have a single controlling decision upon the question (i. e. domicile)."

Keeping in mind that the question of domicile, a determination of which would fix the place of the debt for distribution, was in dispute, there is nothing in either the decision or the language of this Court in the *Baker* case that in the least aids the State in the present case.

Respectfully submitted,

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